

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session  
January 22, 1969

Meeting was called to order by Chairman Torvinen at 2:25 P.M.

Present: Torvinen, Schouweiler, Kean, Fry, Reid, Bryan, Lowman

Mr. Lowman left after a few minutes and Mr. Swackhamer and Mr. Prince came in later.

AB 25: Corrects penalty provision relating to forged instruments.

Mr. Russ McDonald was present to speak for this and several other bills.

McDonald: This is one of my bills to correct an error in the journal code. The penalty was given as "not less than \$5,000", 6-8-1967. Judge Sexton called and asked if this made sense. It should have said "not more than \$5,000".

Mr. Bryan moved Do pass  
Mr. Schouweiler seconded  
Motion carried unanimously

AB 26: Changes "alcoholic beverage" to "intoxicating liquor" in NRS 202.055.

Mr. McDonald: This is to correct an inconsistency on the part of the bill drafter. We must use the same terms in the same section. We would just like to change the wording.

Mr. Reid: Don't you feel "intoxicating liquor" is better?

McDonald: I am not sure, but at least we should be consistent.

Mr. Lowman moved Do Pass  
Mr. Bryan seconded  
Motion carried unanimously

AB 27: Clarifies language of extradition statute to designate correctly district attorneys and state board of parole commissioners.

McDonald: Up until 1967 Nevada did not have a uniform extradition law. The governor proposed, and we passed, an act for this purpose. All Ab 27 does is to change some wording. "Prosecuting Attorney" is not a recognized title.

Mr. Kean moved Do Pass  
Mr. Schouweiler seconded  
Motion carried unanimously

AB 28: Provides for service of notice of proceedings for termination of parental rights.

McDonald: This has to do with determination of parental rights. The practicing lawyers can probably explain better than I what was wrong.

The State Bar wanted to change the procedure in this special proceeding to NRCR. I guess nobody read it thoroughly. After it was passed, all hell broke loose. Everybody was doing it double in order not to be caught short. I have letters from everybody with an active practice. All of you should read it carefully and make sure that we have it right this time.

Mr. Torvinen: We are conforming "complaint" and "summons".

Swackhamer: What is the difference between "summons" and "notice of hearing"?

McDonald: A "summons" may be served by a number of people of the court. "Notice of hearing" is provided by statute. "Notice" normally gives notice. Let's say a father loses himself and the wife remarries. They want to make an adoption and they can't find the father. They publish a notice in the newspapers.

Torvinen: The notice sets a time certain in which to appear and complain. With a summons you have 20 days to answer.

Kean: What happens if you know where a man is but pretend you don't.

Torvinen: That is a different procedure. If you are found out, there will be a charge of fraud and the case will be set aside.

At this point Mr. McDonald was excused.

Torvinen: I have given you all a copy of the rules for the committee, slightly modified from last time. They seemed to work well at the last session.

Bryan: In No. 3, second sentence, what does "disposed before the Committee" mean?

Swackhamer: Agreement between gentlemen. I have never seen it violated. I would like to go back to AB 28. What is the minimum amount of time that this whole thing could take?

Torvinen: It would take about 7 weeks. 20 days subsequent to the last publication. I don't see any reason to hold this up.

Fry: I would like a chance to study it.

Mr. Reid moved to adopt the Rules of Procedure for the Committee.  
Mr. Schouweiler seconded  
Motion carried unanimously

Torvinen: AB 24 has been amended and I will put it in.

AB2: Provides for three-judge panel to determine sentence in all capital cases.

Torvinen: This is a fairly serious piece of legislation. It takes away from the jury the privilege of finding the death penalty. Does anyone know where this came from?

Reid: Probably it came from George Franklin. We haven't had a death sentence in Clark County for 15 years except for Rainsberger.

Schouweiler: The judges won't like this.

Bryan: Where the judges and the court concurred you could have a certain penalty. I think the statute is adequate the way it is. The jury hasn't the province to return a death penalty.

Fry: I think we should hold up this bill for Mr. Lowman, and find out what it is all about.

Bryan: Perhaps we should hold AB 2 for a hearing along with other similar bills.

Kean: Do you see anything wrong with grouping these bills for one hearing, as long as these people have to come?

Reid: Does anyone know the history of this 3-judge panel thing?

Schouweiler: Judge Taylor died the day after he had to render a decision of death.

Reid: Maybe he would have died anyway.

Kean: I would like to clarify this in my mind. If you have a trial by jury and they have found the defendant guilty, then you call in 3 judges, one of whom has been a part of the trial? Then you call in two more who have not been present at the trial?

Torvinen: Yes, the other two have to be from out of the jurisdiction.

Kean: Then the decision will be based on the circumstances? He will not have seen the witnesses, the expressions on their face and so forth.

Reid: Mostly on how the press has handled the case.

Fry: Provisions for an appeal might enter in also. The Witherspoon case might have something to do with this bill.

Bryan: With Witherspoon they did not set aside the whole thing.

Swackhamer: On this kind of bill, basic and complicated, I would like to hold them and hear George Franklin and others.

Torvinen: That's what we will do. I would also like to hear Raggio on this.

Kean: How much extra money would this bill cost the state?

Bryan: It would require in every capital case the preparation of a transcript, so that the two judges called in from without the jurisdiction could review the evidence. Also there would be the cost of flying in the judges.

Fry: I would judge it would run between three and four thousand dollars per case.

Kean: Would this be for every case?

Fry: Every capital case.

Bryan: There is one other thing to consider. With an ordinary non-capital proceeding, the judge imposes sentence. Both sides present evidence of mitigation, etc. I can think of a hundred ways to delay things with this bill. It could become a very lengthy procedure.

Kean: Roughly, how much would it delay wrapping up the case?

Schouweiler: That would depend. It could be anywhere from a couple of days to weeks or months.

Fry: By "wrapping it up" do you mean the final decision?

Kean: I mean off the court's book.

Fry: I would imagine at least two months.

Reid: What are Zel's reasons for this bill? Are we just spinning our wheels without him here?

Bryan: I think it comes from that case last year pertaining to the qualifying of the jurors, the Witherspoon case.

Kean: To sum up: This would cost in the neighborhood of three or four thousand dollars and delay final disposal of the case for two or three months.

Reid: The leeway this could give lawyers! I can think up a lot of things to delay proceedings and make a further mess of our judicial system.

Kean: We have 1. Time 2. Money 3. Nationally, the trend is away from the death penalty. Maybe the thing will take care of itself.

Reid: I think we would have trouble now getting three judges to give the death penalty.

AB 34: Repeals requirement that actions against State of Nevada be brought in Ormsby County.

Torvinen: My name is on this bill. It would repeal NRS 13.025 which says that all actions against the state of Nevada shall be filed in Ormsby County.

We had Billy Cole in here and asked him if it applied to NIC. He said No, but I had a case which involved the NIC and it came back because it was not filed in Ormsby County. This bill is to specify that it doesn't apply to NIC.

Schouweiler: Why don't we wait on this?

Torvinen: We will call Harvey Dickerson and Billy Cole over and let them talk to us about this.

Without this bill we can cause some hardship. If a fellow in Ely has a case that involves NIC and it is not a very big case, it is hard for him to come to Ormsby County, transport witnesses, etc. We have denied his case.

Fry: Maybe he can't afford a lawyer and he has to transport witnesses to Carson City, it could be rough.

Bryan: It imposes the final burden on the litigant.

Swackhamer: Let's find out how many suits have been filed on this.

Reid: The taxi drivers in Clark County have literally gone bankrupt running up here with witnesses and cases.

Torvinen: Why don't we set a hearing on AB 34 for next Thursday?

Fry: Maybe we could have the Clerk of Ormsby County in, too.

Swackhamer: On things like the PSC and various administrative boards, we tend to put something in here that is going to put people's rights and their rights to operate their businesses in jeopardy. Maybe we don't think about them long enough. Sometimes we increase their costs too much. We try to get around this with the catch-all phrase "you will have the right to protest this by filing in Carson City and you can be heard" and so on. How practical is that for a man running a small business in Wells. We are not giving him one bit of protection and we do it time after time.

Mr. Bryan and Mr. Fry concurred in this thought.

AB 36: Makes posting of bond discretionary where insanity is ground for divorce.

Torvinen: The paragraph starting with line 17 is the only part we are concerned with.

Bryan: Does this, then, make it discretionary?

Torvinen: Sometimes the judges ignore this and grant the divorce anyway.

Fry: Does this come from Harry Swanson?

Torvinen: No, it comes from Speaker McKissick.

Bryan: Is there any opposition to this?

Torvinen: I don't know.

Mr. Kean moved Do Pass Ab 36

Mr. Schouweiler seconded

Motion carried unanimously

Torvinen: For the benefit of the new members: The Judiciary Committee has a lot of bills as you can see. Ordinarily, the Chairman of a Committee is the one who stands up and explains the bill on the floor. I don't want to do all of these. I will do the first few and then I am going to pass them around. I will ask Mr. Bryan, Mr. Reid, and Mr. Fry to do all the lawyer bills.

Kean: We seem to be getting a lot of drug bills in this session.

Schouweiler: I would like to hold up on the drug bills until we have them all, and until we have the Sub-Committee's Report on Drug Abuse.

Bryan: It might be more logical to consider all these at the same time.

Torvinen: We will hold AB 37 for additional drug bills.

Kean: There will be at least three more. Can we do something about the buying of component parts of a drug, rather than the drug itself?

Bryan: I would like to have an expert on narcotics in to speak to us.

Kean: I could get a good man from San Francisco. Perhaps Mr. Speaker could announce from the floor that on a certain day we are going to consider all bills on drugs. Then we might get them in quicker.

Meeting was adjourned at 3:15 P.M.